

STATE OF MAINE  
OFFICE OF SECURITIES  
121 STATE HOUSE STATION  
AUGUSTA, ME 04333-0121

IN RE:

James L. Clifford

CONSENT ORDER  
No. 06-073-COR

In order to resolve this matter expeditiously, and without admitting or denying the allegations in the original Notice of Intent, dated November 28, 2006, the Amended Notice of Intent, dated January 17, 2007, or the findings of fact or conclusions of law herein, James L. Clifford ("Clifford") agrees to the entry of this Consent Order and waives his right to a hearing and to judicial review of this Consent Order.

PROCEDURAL BACKGROUND

On November 28, 2006, the Securities Administrator issued a Notice of Intent to revoke Clifford's agent license and censure him or bar him from association under 32 M.R.S.A. §§10313(1) and 16702(1). On December 14, 2006, Clifford made a timely request for a hearing. The Securities Administrator issued an amended Notice of Intent on January 17, 2007. At the request of the parties, the Securities Administrator indefinitely continued the proceedings on February 17, 2007, in anticipation of resolving this matter without a hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Clifford (CRD # 1419478) is an individual who has been licensed in Maine as a sales representative or agent since at least 1985. His last known address is 955 Eastern Avenue, Holden, Maine 04429.
2. From December 4, 1997, to the present, Clifford has worked as a sales representative or agent at the Brewer, Maine, branch office of Investors Capital Corp. ("ICC").
3. Pearl P. Schoppe ("Ms. Schoppe") was a life-long resident of Orono, Maine, and the valedictorian of the 1936 graduating class of Husson College in Bangor, Maine.
4. In May of 1996 Ms. Schoppe established a living trust (the "Schoppe Trust") with herself as trustee and with two of her relatives designated as trustees upon her death. The original trust document directed that upon Ms. Schoppe's death, after payment of any of Ms. Schoppe's debts, expenses and taxes, and certain distributions, the remainder of the

trust property was to be held in trust for Husson College with income distributions to fund a scholarship program.

5. Ms. Schoppe was conservative with her investments. She essentially bought only certificates of deposits and fixed annuities.
6. In October of 1998, Ms. Schoppe, then age 80, amended the trust document to, among other things, change the trustee upon her death to Clifford. The amendment also changed the provision regarding the distribution of the remainder of her trust property. As amended, instead of the property being held in trust for Husson, the trust instrument dictated that the property was to be “distributed to the National Heritage Foundation F.B.O. Pearl P. Schoppe Foundation.”
7. The charitable purpose stated by Ms. Schoppe on the National Heritage Foundation application was “Assist students of the Greater Bangor/Brewer, Orono/Old Town, ME area who need financial aid to attend Husson College. To be paid out interest only 80% of interest to go to students, 20% of the interest to go back into the Foundation so foundation will continue to grow.”
8. Ms. Schoppe died on January 19, 2000.
9. On March 7, 2000, Clifford and John T.”Dock” Houck, II, CEO of National Heritage Foundation, (“NHF”) completed the paperwork for “National Heritage Foundation Inc. FBO Pearl Schoppe FNDTN” to purchase a \$150,000 variable annuity from Consec Variable Annuity Insurance Company through ICC, using funds from the Schoppe Trust.
10. On May 11, 2000, Clifford sent an additional \$50,000 from the Schoppe Trust’s checking account to Consec to add to the variable annuity.
11. The variable annuity sold by Clifford to the foundation was unsuitable for the charitable purposes expressed by Ms. Schoppe.
12. Clifford received \$12,600 in commissions on these transactions. In addition, Clifford has paid himself trustee fees exceeding \$42,000.00 from the trust assets.
13. Between the purchase of the variable annuity in March of 2000 and the commencement of these proceedings in November of 2006, Husson College received no scholarship money from the Pearl P. Schoppe Foundation.
14. Under federal law, variable annuities are securities and the offer and sale of variable annuities is regulated by the United States Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933 and Securities Exchange Act of 1934.
15. The NASD (now FINRA, the Financial Industry Regulatory Authority, but herein referred to by the name used at the time at issue) is a national securities association registered with the SEC under §15A and in accordance with the provision of §19(a) of the Securities Exchange Act of 1934.

16. NASD Rules are filed with the SEC and promulgated under §19(b) of the Securities Exchange Act of 1934. NASD rules apply to “all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member” under the association’s rules. NASD Rule 0115.
17. ICC is a member of NASD and Clifford is a person associated with ICC.
18. NASD Rule 2110 requires “[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.”
19. NASD Rule 2310 requires that a member have reasonable grounds for believing that a recommended purchase is suitable for a customer based on the facts disclosed by the customer including the customer’s investment objectives.
20. By virtue of his training and experience, Clifford knew the requirements of NASD Rules 2110 and 2310. Through his customer relationship with Ms. Schoppe, Clifford knew her investment objectives and the charitable purpose for which she established the Pearl P. Schoppe Foundation. Thus, Clifford intentionally or knowingly failed to comply with NASD Rules 2110 and 2310. 32 M.R.S.A. §10313(1)(B). By engaging in the above conduct, Clifford also engaged in unlawful or unethical conduct in the securities business. 32 M.R.S.A. §10313(1)(G).
21. Pursuant to 32 M.R.S.A. §§10313 and 16702, the Securities Administrator may, after notice and opportunity for hearing, issue an order to revoke the license of a licensee or impose a bar on a licensee if the Securities Administrator finds that the order is in the public interest and that the licensee: (1) has engaged in unlawful, unethical or dishonest conduct in the securities business; or (2) has intentionally or knowingly violated or failed to comply with a rule under the Securities Exchange Act of 1934.

### ORDER

Clifford’s Maine agent license shall, for a four year period, be subject to the following restrictions:

1. He will not act in any principal, supervisory, or managerial capacity for a broker-dealer;
2. Within 15 days after learning of any investigation, proceeding, or written or oral customer complaint against him arising out of activities in the securities industry, including activities concerning annuity products, Clifford will send written notification to the Office of Securities of the investigation, proceeding, or complaint;
3. He will not exercise discretionary authority in the account of any Maine customer without the prior written consent of the Office of Securities;
4. Clifford will ensure that his broker-dealer will undertake supervision of him by a person who is licensed as an agent with the State of Maine and registered with FINRA as either a General Securities Principal or an Investment Company Products/Variable Contracts Limited Principal;

5. Clifford shall promptly inform the Office of Securities of any change in the individual at the broker-dealer who is responsible for the exercise of his supervision;
6. Clifford will ensure that his supervisor will review all of Clifford's accounts and transactions to ensure that each transaction is suitable for the customer, including any transactions involving the exchange of one securities product for another securities or insurance product.
7. Clifford will use his best efforts to obtain his broker-dealer's written agreement to the above supervisory requirements and will provide a copy of any such written agreement to the Office of Securities.

Failure to adhere to the above restrictions will constitute grounds for the Securities Administrator to revoke Clifford's agent license or take any other available action.

In any future action taken concerning Clifford's agent license, except for an action for breach of this Consent Order, the Office of Securities agrees not to take action based solely on the terms of this Consent Order or the allegations contained in the Amended Notice of Intent, provided, however, that nothing in this Consent Order will preclude the Office of Securities from taking licensing action based on other allegations, or from taking this Consent Order and the underlying allegations into account in determining the proper resolution of such other allegations.

Date: December 3, 2007

s/James L. Clifford  
James L. Clifford

Date: December 13, 2007

s/Bonnie E. Russell  
Bonnie E. Russell  
Acting Securities Administrator